



COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX

Office of Comprehensive Planning
Zoning Evaluation Division
4050 Legato Road, Suite 700
Fairfax, Virginia 22033
246-1290



November 13, 1990

Mr. Martin D. Walsh
Walsh, Colucci, Stackhouse, Emrich & Lubeley
2200 Clarendon Boulevard, 13th Floor
Arlington, Virginia 22201

Re: Interpretation for RZ 86-W-001, RZ 86-P-089

Dear Mr. Walsh:

This is in response to your letter of October 31, 1990 (see Attachment) requesting an interpretation of proffer B4 accepted by the Board of Supervisors in conjunction with the approval of RZ 86-W-001 and RZ 86-P-089. As I understand it, the question is whether the terms outlined in your letter are in conformance with proffer B4. It is my understanding that the terms of the agreement are as follows:

1. You will convey the recreational facilities to the umbrella association upon either eight (8) months from the date of your letter, the denial of a proffered condition amendment by the Board of Supervisors, or the issuance of the sixtieth (60) residential use permit (RUP) for the condominium project, whichever first occurs.
2. The documents establishing the umbrella association, as a non-stock corporation, have been prepared and submitted to the County Attorney's office. The bylaws, articles of incorporation, declaration and other documents will incorporate a structure and membership that is satisfactory to the County.
3. The documents for the umbrella association, including the certificate of incorporation, will be placed in escrow with a third party designated by the County by November 29, 1990; signatories to the document shall be acceptable to the County Attorney. This timeframe anticipates expeditious review and turnaround by both the County and Artery.
4. The escrow agreement will instruct the Escrow Agent to record and implement the umbrella association documents in the event that the Board of Supervisors denies the proffered condition amendment referenced in paragraph 7 below, or eight (8) months from the date of your letter, whichever first occurs.
5. No additional plats beyond the record plat for the first section of the development shall be approved and no RUPS beyond the sixtieth (60) RUP shall be issued for the condominium units until the umbrella association documents are recorded or the proffered condition amendment referenced in paragraph 7 below is approved by the Board of Supervisors.

6. An Escrow agreement, with instructions, will be delivered to the County Attorney for approval within seven (7) days from today.
7. Within seven (7) days from today, you will file an application for a proffered condition amendment that will request approval to amend proffers B3 and B4.

It is my further understanding based upon conversations with you and Tom Colucci that Paragraph 7 will be deleted from the draft Reciprocal Easement Agreement.

It is my determination that the terms outlined in your letter and reiterated above are in conformance with the proffers and that, with the deletion of paragraph 7 from the Reciprocal Easement Agreement, the condominium plats can be approved by the County. It is further my determination that, by recording the Reciprocal Easement Agreement without paragraph 7, you are not deemed to have waived any rights that you may otherwise have had to challenge my interpretation of the existing proffers. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

In addition, at your request, I have reviewed the draft proffered condition amendment language that you have proposed to file as a modification to proffer B-4, such that an umbrella homeowners association will no longer be required to operate the common recreational facilities. I am in conceptual agreement with your proposal and would recommend approval accordingly provided that the recreational facilities are available on an equal, non-discriminatory and exclusive basis to all owners and/or renters of the townhouse condominiums and all tenants of the apartment units. In addition, I would suggest that you modify the language to clarify that a small leasing office will be located within the community building.

I hope that this satisfactorily resolves the issue. If you have any questions regarding this interpretation, please feel free to contact me at 246-1250.

Sincerely,



Barbara A. Byron, Director
Zoning Evaluation Division, OCP

BAB/bb

Attachment: A/S

cc: Elaine McConnell, Springfield District Supervisor
J. Hamilton Lambert, County Executive
Peter Murphy, Springfield District Planning Commissioner
Jane W. Gwinn, Zoning Administrator
Edward J. Jankiewicz, Director, Design Review Division, DEM
John Donnelly, Design Review Division, DEM
Bonds and Agreements Branch, DRD, DEM
Robert L. Howell, Deputy County Attorney
Ellen Pirog, Assistant County Attorney
File: RZ 86-W-001; RZ 86-P-089